



Communications Workers of America comment on the FTC-DOJ workshop titled “Making Competition Work: Promoting Competition in Labor Markets”

I. Introduction

The Communications Workers of America (CWA) welcomes the antitrust agencies’ attention to issues of labor market competition that have been sorely neglected for decades. As the public workshop participants described in detail, there are many specific areas in need of reform and attention from a labor market standpoint, including merger review, unfair vertical restraints, exemptions and waivers from antitrust laws, interagency cooperation, and more.

CWA is a labor union that represents workers in the communications and technology industries, news media, airlines, broadcast and cable television, public service, higher education and health care, and manufacturing.

During a panel on December 6, several labor organizations sought to emphasize the need to grapple with the inherent inequality of power between workers and employers, which is acknowledged by the National Labor Relations Act but not generally by competition law. The widening gulf of economic inequality and increasing level of corporate consolidation in the United States should cause antitrust regulators and policy makers to rethink this silence on power, and examine the manner in which corporate and competition law has evolved to enable lead firms to consolidate control over far flung operations without directly owning assets or employing workers. The means through which corporations exercise this control over externalized operations and workers has been described as “fissuring,” a term coined by David Weil, that encapsulates a variety of attenuated relationships between lead firms and workers, including subcontracting, franchising, licensing, temp staffing, use of 1099 independent contractors (often misclassified), and spinoffs or other corporate restructuring that remove workers from the lead firm and the ability to make claims on it for rights or resources.¹

These comments describe fissuring in two sectors, telecommunications and data centers, and the consequences for workers in terms of rights denied and working conditions degraded. These examples can stand in for many sectors because the corporate strategies evident here have been widely adopted

¹ David Weil, *The Fissured Workplace: How Work Got So Bad for So Many*, Harvard University Press, 2014. Also see Brian Callaci, “The Historical and Legal Creation of a Fissured Workplace: The Case of Franchising,” dissertation, University of Massachusetts Amherst, 2019. <https://scholarworks.umass.edu/dissertations/2/1696/>

as part of corporate restructuring trends in recent decades. The results for workers are nothing short of horrendous, including slashing of wages, loss of access to basic employment rights like workers' compensation for misclassified workers, loss of access to high quality health insurance, denial of the right to collective bargaining with the firm that captures the lion's share of profits, and a broad degradation of working conditions caused by pressure on the supply chain of vendors and contractors to deliver services for "competitive" costs in a monopsonistic market.

The antitrust agencies should examine the contractual and operational relationships of domination that enable lead firms to siphon profits away from workers and smaller businesses. Regulators should then use their existing enforcement toolset to challenge as illegal the aspects of these relationships that undermine fair outcomes for workers and consumers. Ultimately, Congress will need to reexamine the federal government's role in supporting fair markets through affirmative means, but regulators already have many tools through which to address the rampant harms of an economy tilted towards the largest corporations and financial interests.

II. Telecommunications fissuring and its impacts

a. Overview of the telecommunications labor market

The telecommunications industry has evolved similarly to other previously regulated sectors where pro-competition regulatory intervention in the 1970s and 80s failed to take account of negative outcomes for workers who lost sector-wide bargaining mechanisms.² New entrants to the market – including cable, wireless and satellite providers – developed business models that specifically avoid unionization and disempower workers through outsourcing of work combined with aggressive anti-union orientation. While several large, publicly-traded corporations dominate the mobile and fixed broadband markets, those firms rely on a web of thousands of subcontractors to provide a large portion of the labor inputs, and require vendors to provide services at rates that result in low profits for vendors and low wages for workers. Due to this confluence of factors, union representation in the telecommunications sector, as defined by the Bureau of Labor Statistics, stood at 16 percent in the period 2016 to 2019, down from 60 percent in the period 1976 to 1979.³ During this same period, real wages have grown slowly for telecom

² Hiba Hafiz "Rethinking Breakups," Duke Law Journal, Vol. 71, 2022.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3892326

³ Economic Policy Institute, "Decades of slow wage growth for telecommunications workers," October 2020, table 4. <https://www.epi.org/publication/decades-of-slow-wage-growth-for-telecommunication-workers>.

technicians and have contracted by 12 percent for the lowest-paid decile of telecom technicians, reflecting the free market race to the bottom.⁴

b. Broadband network construction

In both the wireline and wireless segments of the broadband industry, lead firms have increasingly outsourced engineering, construction and other functions critical to network operations. This cost-cutting strategy reflects priorities set by Wall Street to maximize profits and limit capital investment to the highest-return activities.

The big three wireless carriers have created a multi-tiered system of outsourcing to general contractors called “turf vendors,” followed by additional levels of subcontracting work to small construction contractors.⁵ In a survey of small wireless construction contractor firms by the publication *Wireless Estimator*, a majority reported that carriers squeeze their cash flow in various ways, including delayed payments, prohibition on marking up certain materials or services (such as cranes), and adding administrative responsibilities that cannot be billed. Respondents also said turf vendors have invited more contractors to bid on each job in recent years, suggesting contractors face increased pressure on profit margins because they operate in a monopsonistic market. Contractors exercise limited control over construction expenses and must compete largely based on labor costs, leading to lower wages and worse conditions for tower climbers and technicians. As one survey respondent said, “There are no ‘fair’ turf contracts because all of the turf vendors believe they can sign terrible contracts with AT&T and then pass all of the risk to their subs.”⁶ These contractors have recently attempted to mobilize to protect their interests, threatening to refuse to sign Verizon’s matrix pricing contracts.⁷

The impacts on workers of this fragmented labor market structure include:

⁴ Ibid.

⁵ Communications Workers of America, “AT&T’s Web of Subcontractors: Building Next Generation Networks with Low-Wage Labor,” October 2020. <https://cwa-union.org/sites/default/files/20201005attsubcontractorreport.pdf>.

⁶ *Wireless Estimator*, “Contractor survey uncovers some startling financial statistics that could trigger a 5G train wreck,” January 30, 2019. <http://wirelessestimator.com/articles/2019/contractor-survey-uncovers-some-startling-financial-statistics-that-could-trigger-a-5g-trainwreck>

⁷ *Wireless Estimator*, “Contractors rebelling against ‘take it or leave it’ matrix pricing that could easily endanger carriers’ 5G builds,” October 12, 2021. <https://wirelessestimator.com/articles/2021/contractors-rebelling-against-take-it-or-leave-it-matrix-pricing-that-could-easily-endanger-carriers-5g-builds/>

- Risks to safety due to financial incentives to work faster - With pressure on margins, and contractors paid fixed amounts by the job, incentives push workers to cut corners and speed through the work;
- Risks to safety due to poor labor law compliance - When companies know they won't be on the hook for safety violations, training and compliance can take a back seat. Workers are often misclassified as 1099 independent contractors, for example, in the the wireless tower climber workforce, where 33 workers have died on the job over the past five years⁸;
- Risks to safety and income security due to high turnover, which is driven by inadequate investment in worker training and compensation.

Because the telecom sector is highly concentrated, the fissuring described above should prompt investigation into the presence of unfair methods of competition, exclusive discounts, restrictive contracts, labor monopsony, and other measures of domination of small businesses and workers by a small number of lead firms.

c. Wireless retail licensees

CWA has experience with a form of fissuring in the retail sector that is similar to franchising but is designed as a licensing regime, likely to avoid franchise disclosure requirements.⁹ Wireless carriers outsource the operation of between 60 and 80 percent of their branded retail locations to third party licensee companies known as “authorized retailers” that range from mom & pops with a few stores to large companies that operate more than a thousand stores each, like Prime Communications, AT&T’s largest authorized dealer, which operates nearly 2,000 AT&T branded stores nationwide.¹⁰

⁸ Wireless Estimator, “US Tower Structure Related Fatalities” Accessed 12/10/2021. <https://wirelessestimator.com/content/fatalities> In its recent investigation of a 1099 worker fatality in Texas, Wireless Estimator noted, “Multiple contractors have contacted Wireless Estimator in the past with their concerns that 1099 contractors have kept matrix pricing artificially low because those individuals do not have the overhead required to perform a safe, quality installation.” Wireless Estimator, “A 1099 crew’s 53-year-old tower technician falls to his death from a Verizon tower in Texas,” December 1, 2021. <https://wirelessestimator.com/articles/2021/a-1099-crews-53-year-old-tower-technician-falls-to-his-death-from-a-verizon-tower-in-texas/>

⁹ See, e.g., American Bar Association, Landslidemagazine, “Structuring Licenses to Avoid the Inadvertent Franchise,” Vol. 2, No. 4, March/April 2010, https://www.dwt.com/-/media/files/publications/2010/03/structuring-licenses-to-avoid-the-inadvertent-franchise/files/landslide_structuringlicenses/fileattachment/pubs_landslide_structuringlicenses.pdf.

¹⁰ <https://www.primecomms.com/about-us-1>

The carriers pay authorized retailers a commission on each sale. Managers at authorized retailers reportedly push workers to engage in deceptive sales practices in order to maximize sales. Some workers report being paid minimum wage plus commission, meaning that workers face intense pressure to sell in order to make a liveable wage.¹¹

Workers CWA has spoken to at licensee locations believe the wireless carrier has ultimate authority over their terms and conditions and they feel powerless to demand improved conditions from their own direct employer. While this arrangement may qualify as a joint employer relationship if the NLRB establishes better rules in that area, the wireless carriers have designed the operations to limit joint employer risk by skirting the line of direct involvement in hiring, firing and discipline of licensee workers. However, the domination of both the licensee companies and their employees by the big carriers is evident, from worker non-compete to contractual terms that dictate where a licensee can locate, what it can sell, and many other minutia of operations. In one example, a worker from an authorized dealer location was hired for a job at a corporate AT&T location. AT&T and the authorized dealer then worked together to enforce a noncompete against the worker, resulting in the worker being unable to work at the corporate location. In another example, a worker was unable to work at an authorized dealer because a system shared by corporate stores and authorized dealer stores labeled him as having committed a policy violation. Further, AT&T reportedly enforces a policy of not hiring authorized dealer workers until they have been off payroll for six months. Employers in these types of arrangements are able to reap the cost savings of acting like separate entities, while coordinating like one entity to limit employment options.

Similar to franchising, the obstacles to workers exercising their rights are inherently tied up with the relationship of domination of the licensee by the licensor.

d. Call centers in telecom

A similar pattern exists in call centers, in which telecoms outsource a substantial share of customer service work to non-union call center vendors in the U.S. and globally in the Philippines, India, the Dominican Republic, Colombia, Mexico, and elsewhere. The global “business process outsourcing” industry has grown up over the past thirty years to serve this demand across various consumer verticals. The virtual nature of call center work makes it highly mobile, and CWA has experienced how easily

¹¹ Communications Workers of America, “AT&T’s Retail Sales Problem,” 2017. <https://www.cwa-union.org/sites/default/files/consumerreport-6-5-2017.pdf>.

employers can shut down call centers to avoid unionization.¹² Workers in third party contractor call centers are paid lower wages – \$15.85 an hour compared to the mean for all customer service representatives of \$18.51, as of May 2020¹³ and wages for union-represented call center agents in the low-\$20s to low-\$40s – and they often face exploitative conditions that may lead to fraudulent sales and subpar service. CWA members report that they often handle customer problems caused by vendor errors and mismatched incentives.¹⁴

e. Market-driven restructuring is a global phenomenon that requires policy responses to protect the public interest

In telecom and beyond, antitrust regulators should take care not to over-rely on protections for *worker exit* to support healthy labor markets, and instead acknowledge the importance of collective bargaining in facilitating countervailing power for workers. As Virginia Doellgast investigates at length in her forthcoming book *Exit, Voice, Solidarity*, recent restructuring in the telecommunications sector across ten countries has had different outcomes for job quality and job security depending on the level of institutional supports for collective bargaining, the robustness of *limits on employer exit*, and the ability of workers to mobilize “inclusive solidarity” across different workgroups and unions.¹⁵

Among the countries studied, the United States is on the extreme low-end in protecting workers’ interests due to its absence of supports for workers’ voice and lack of limits on employers’ ability to cut jobs and reduce job quality. Grouped with the United Kingdom, the Czech Republic, and Poland, the United States exhibits the following qualities:

There was coordinated bargaining within the incumbent firms, backed by organized membership, but unions faced constant threats that employers would exit internal employment relationships, for example, via downsizing, spin-offs, or outsourcing. At the same time, institutional resources to organize and extend bargaining to new firms or groups of workers were weak. Together, this influences the parameters of solidarity strategies: unions’ main power resources are within their

¹² Debbie Goldman, “Dialing for Change: Organizing Call Center Workers in the 1990s,” *Labor: Studies in Working Class History*, Volume 18, Number 4, December 2021. <https://muse.jhu.edu/article/840354/summary>

¹³ Call center companies that contract with consumer-facing businesses are classified within the “Business Support Services” industry. Bureau of Labor Statistics, Occupational Employment and Wages, May 2020, 43-4051 Customer Service Representatives. <https://www.bls.gov/oes/current/oes434051.htm>

¹⁴ Communications Workers of America, “Offshoring Customer Service: How AT&T Lowers Standards for Workers and Consumers Through Its Global Race to the Bottom,” 2018. <https://www.cwa-union.org/sites/default/files/20180501-att-offshoring-customer-service.pdf>

¹⁵ Virginia Doellgast, *Exit, Voice, Solidarity: Contesting Precarity in US and European Telecommunications Firms*, Oxford University Press, forthcoming 2022.

core firms, and so they focus on using these resources to fight the expansion of precarity – often leading to trade-offs when employers demanded concessions in return for job security. At the same time, the main institutional tools for improving conditions across the workforce are based on strengthening legal protections, in countries with overall weak legal minimum standards.

As Doellgast explains, telecom restructuring in the wake of deregulation across the countries studied, “to the extent that it is market-oriented,” has tended to cause degradation of pay and conditions “involving a shift in the employment relationship away from social concerns with internal coordination and equity, and toward market-based concerns that prioritize maximizing short-term profit.” To counter this inherent resistance by private corporations to social considerations, Doellgast explains that “firms are more likely to balance social with market concerns where they face negotiated or legal restrictions on their ability to exit internal employment relationships and introduce competition across different groups of workers.”¹⁶ While U.S. unions in telecom have negotiated some protections against employer exit from employment relationships, deregulation and weak labor laws have hamstrung workers’ ability to prevent extensive outsourcing and degradation of job quality.

III. Data centers and the case of fissuring at Alphabet

a. Overview of the data center labor market

There are three main categories of data centers by ownership type: cloud/internet giants (owned by big tech companies), enterprise data centers (owned by a company for its own data and support operations), and colocation data centers (centers that lease capacity to other companies). Cloud giants’ data centers are expected to see the fastest employment growth over the next five years globally, from around 475,000 jobs in 2019 to 975,000 in 2025, with the fastest growth in the Asia-Pacific region.¹⁷ The enterprise data center industry is trending toward consolidation of small data centers into larger, centralized sites or outsourcing to cloud and colocation companies, which is driving a decline in enterprise staff needs over time. Cloud giants like Amazon Web Services, Microsoft Azure, and Google Cloud continue to win share and shape the labor market for data center technicians and other workers. With North American data center employment projected to rise by 84,000, for a total workforce of more

¹⁶ Ibid at 3-4.

¹⁷ Uptime Institute, “Global Data Center Staffing Forecast, 2021 to 2025,” <https://datacenter.uptimeinstitute.com/2021-staffing-report.html>

than 650,000 by 2025, these jobs represent an opportunity to create pathways to IT and software careers.¹⁸ Despite this potential, the example of Google should raise concerns about how major tech giants promise quality jobs when they enter communities, but in fact rely on temp staffing and contractors where employees face limited growth opportunities and depressed wages.

Fissuring at Google's data centers

Google is infamous for using temps, vendors and contractors (TVCs) to carry out core functions while denying these workers employment protections.¹⁹ For example, many Google data center workers are employed by Modis, a subsidiary of global temp staffing firm Adecco. These data center technicians are paid about \$15 an hour and work alongside direct Google employees who earn significantly more. Workers are attracted by the potential to work for Google – and Google does manage their work day-to-day – but workers have been disabused of the idea they will ever have the chance to work directly for Google and advance in the company. From reports by workers across the country, it appears that Google has stopped hiring direct employees for Data Center Technician 1 roles, suggesting it is “vendorizing” the workforce and relying entirely on Modis for staffing these positions, using a model that treats workers as disposable. Workers sign rolling three month contracts that usually get extended the same day they expire, and the maximum a TVC can work on-site is for two years, and then there is a mandatory 6-month break that is usually subsidized by unemployment. Modis parent Adecco acknowledges that maximum tenure policies are outmoded and inefficient, saying that if such policies are used solely for “delineating temporary workers from permanent employees ... they will likely do more harm than good.”²⁰

Google and Modis collude to maintain this fissured business model that disempowers workers. But some countries have mechanisms to take this on. Recent leaks from Alphabet indicate that executives knew for at least two years about potential violations of laws across the company's operations in dozens of countries that require paying temp workers the same as their full-time counterparts. Google has admitted the errors and claims to be updating its pay rates.²¹

¹⁸ Ibid.

¹⁹ See, for example, Daisuke Wakabayashi, “Google Could Be Violating Labor Laws With Pay for Temp Workers,” *New York Times*, Sept 10, 2021.
<https://www.nytimes.com/2021/09/10/technology/google-temporary-workers-labor-laws-pay.html>

²⁰ Press Release “Time to Rethink Arbitrary Tenure Limits for Temporary Workers” Adecco USA. 11/9/2019.
<https://www.adeccousa.com/employers/resources/rethink-arbitrary-tenure-limits-for-temp-workers/>

²¹ Julia Carrie Wong, “Revealed: Google illegally underpaid thousands of workers across dozens of countries,” *The Guardian*, Sept 10, 2021.

In the U.S., Google and Modis work together to impose anti-competitive restraints: Modis workers have been told explicitly not to discuss wages, particularly with Google direct employees, and they must sign overbroad nondisclosure agreements and mandatory arbitration agreements that include a class action waiver. Workshop panelist Shannon Wait formerly worked as a data center technician and is a member of the Alphabet Workers Union – a union affiliated with CWA whose members include TVC workers alongside direct Google employees – and was suspended for discussing wages and for union activity. She was told she could not be part of a union because of her temp status. Shannon worked with CWA to file three unfair labor practice charges against Google and Modis, challenging the prohibition on discussion of wages and her suspension for union activity. Recognizing the clear violations of Section 7, the companies settled quickly and posted a notice at this one facility in South Carolina.²² We know, however, that an NLRB posting is not adequate to change corporate culture and this fissured business model that severely disempowers workers. Later in the year, another worker was fired from the same data center for raising concerns about compensation policy.²³

Ultimately, if Google can rely on a disposable workforce, then the people who keep our servers operational have only the exit option, and it's true that turnover is very high. But why would these workers imagine there is a better job somewhere else given their experience in the U.S. labor market? Regulators must find pathways to act on the fundamental power imbalances that prevent workers from exercising collective voice rather than simply heading for the exit.

Conclusion

Antitrust agencies have a responsibility to investigate and act upon evidence of abusive dominance, but after decades of anemic enforcement we lack a common understanding of the scope of government action needed to foster greater fairness in our economy. Given the current administration's commitment to a whole of government approach to competition policy, including a focus on worker empowerment and labor market fairness, regulators should examine highly-concentrated industries like telecom and tech to evaluate the practices of lead firms and how they contribute to unfair outcomes for stakeholders.

<https://www.theguardian.com/technology/2021/sep/10/google-underpaid-workers-illegal-pay-disparity-documents>

²² Communications Workers of America, "CWA Member Wins Settlement with Google," April 1, 2021.

<https://cwa-union.org/news/cwa-member-wins-settlement-google>.

²³ Mark Bergen, "Google Temp, Fired for Being 'Ungoogley,' Files Complaint," *Bloomberg*, December 1, 2021.

<https://www.bloomberg.com/news/articles/2021-12-01/google-temp-fired-for-being-ungoogley-files-labor-complaint>

Respectfully submitted,



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